

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anchor Lighting, a California General
Partnership, Thomas H. Simcox dba Tommy's
On Broadway,

Complainants

vs.

Southern California Edison Company,

Defendant.

Case 02-03-060
(Filed March 27, 2002)

**SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE**

Summary

On March 27, 2002, Anchor Lighting, and Thomas H. Simcox doing business as Tommy's On Broadway, (referred to jointly as "complainants") filed a complaint against Southern California Edison Company (SCE). The complaint alleges that the complainants are considered small commercial customers under Pub. Util. Code § 330(h),¹ and that SCE failed and refused to provide the complainants with the 10% rate reduction as mandated in Assembly Bill (AB) 1890 (Stats. 1996, ch. 854) and contained in §§ 330(w) and 368(a).

¹ All code section references are to the Public Utilities Code.

The focus of today's scoping memo and ruling is to identify the issues in this proceeding and to describe how this complaint should be processed. This scoping memo and ruling determines that the Commission first needs to resolve the issue of whether the complainants' allegations regarding the conflict between § 331(h) and the Commission decisions and tariffs implementing the 10% rate reduction were timely or not, before any other issues raised by the complainants are addressed. Accordingly, a decision will be drafted for the Commission's action on whether or not the three decisions that the complainants have identified are final.

Today's ruling also grants the December 20, 2002 motion of SCE for leave to file certain materials under seal.

Background

The subject matter of this pending complaint formed the basis of a civil action that the complainants filed against SCE in the Los Angeles Superior Court on April 10, 2001, Case No. BC 248372. SCE filed a demurrer to that complaint asserting the Commission has jurisdiction over the dispute. According to the complainants, the Superior Court "sustained the demurrer challenging the Court's jurisdiction as to certain causes of action, namely, violation of Pub. Util. Code § 2106 (predicated upon a violation of Pub. Util. Code § 330 et seq.), negligence in billing, common counts for overcharging, unjust enrichment based upon improper collections, and constructive trust over ill-gotten gains." (Complaint, p. 3.) The causes of action for a violation of the Unfair Competition Act and fraud were stayed by the Superior Court pending the Commission's determination on whether § 330 was violated by SCE for failing to provide the complainants with the 10% rate reduction.

Decision (D.) 97-09-056 (75 CPUC2d 555) approved a financing order for SCE which allowed it to finance \$3 billion in transition costs, as authorized in AB 1890, through the issuance of rate reduction bonds. The rate reduction bonds allowed SCE to provide a 10% rate reduction through the rate freeze period to residential and small commercial customers. Ordering Paragraph 17 of D.97-09-056 stated:

“To the extent that rate reduction bonds have been issued, beginning January 1, 1998, Edison shall reduce the rates to eligible residential and (as defined in PU Code Section 331(h)) small commercial customers, from the rates that were in effect on June 10, 1996 by providing a 10% bill credit. For such purpose, eligible customers shall include all residential customers, commercial customers in the Domestic and General Service (GS-1) rate groups.” (75 CPUC2d at p. 580.)

The complainants allege that SCE’s Rule 1, which was approved in D.97-09-056, is in conflict with § 331(h) because only those small commercial customers with a maximum peak demand of less than 20 kW and who are on a GS-1 rate group schedule are eligible for the 10% rate reduction. The complainants contend that § 331(h) defines a small commercial customer as a customer with a maximum peak demand of less than 20 kW, and that the definition is not tied to any specific rate schedule. The complainants and others, who come within the definition of § 331(h), are not eligible for the 10% rate reduction because they take service under a General Service 2 rate group schedule.

The complainants also allege that SCE's Rule 1 is in conflict with D.96-12-077 (70 CPUC2d 207) and D.97-08-056 (74 CPUC2d 1).² The complainants further allege that SCE made false representations to the Commission regarding which customers were eligible for the 10% rate reduction. The complainants also contend that SCE violated or failed to comply with D.97-09-056, D.96-12-077, D.97-08-056, and § 331(h).

On September 10, 2002, an ALJ ruling was issued which set a prehearing conference for September 24, 2002. The ruling stated in part:

“Based on the complaint and the answer, the threshold question that faces the Commission is whether or not the Commission made a final determination of the issues presented in the complaint. The issue of eligibility for the 10% rate reduction was developed in A.97-05-006, the proceeding in which D.97-09-055 was issued. No one filed a timely application for rehearing or a petition for modification of D.97-09-055 on the issue of eligibility for the 10% rate reduction.³

“Resolution of the threshold question would involve an analysis of several relevant code sections. A review of §§ 841(c), 1709, 1731(b), 1732, and 1756 suggest that the Commission should proceed with the issuance of a decision addressing whether a final determination

² D.96-12-077 addressed the cost recovery plans of the three electric utilities, and D.97-08-056 addressed the unbundling of electric utility rates.

³ The September 10, 2002 ALJ ruling mistakenly referred to A.97-05-006 and D.97-09-055. A.97-05-006 was the financing order application of Pacific Gas and Electric Company (PG&E). SCE's financing order application, A.97-05-018, and the financing order application of San Diego Gas & Electric Company, were originally consolidated with A.97-05-006. In D.97-09-054, the Commission unconsolidated the three financing order applications so that separate financing order decisions could be issued. (See 75 CPUC2d at 516.) SCE's financing order application, including the issue of eligibility for the 10% rate reduction, was addressed in D.97-09-056 (75 CPUC2d 555). D.97-09-055 (75 CPUC2d 521) was the decision which addressed the financing order for PG&E.

of the issues raised by the complaint has already been made by the Commission. If such a final determination was made, the application of these code sections to this proceeding suggest that the complaint should be dismissed.” (Sept. 10, 2002 Ruling, p. 8.)

The purpose of the prehearing conference was to discuss whether the threshold question should be addressed by the Commission before any further action is taken on the complaint. At the prehearing conference, the parties were directed to file opening and reply briefs on whether the decisions and the tariffs adopted in those decisions are final. The parties were also allowed to brief the issues raised in the complainants’ prehearing conference statement regarding: (1) whether SCE complied with the financing order decision; (2) even if SCE complied with the financing order decision, whether SCE remains liable based on its failure to comply with other Commission decisions and § 331(h); and (3) whether SCE’s Rule 1 was based on SCE’s misrepresentations to the Commission. The complainants and SCE filed their respective opening briefs on October 29, 2002, and their reply briefs on November 19, 2002.

As part of its reply brief, SCE attached some confidential materials which it seeks to file under seal. SCE filed a motion on December 20, 2002 for leave to file Appendix A to its reply brief under seal. No one filed any response to SCE’s motion.

Scope of Issues

As noted in the ALJ’s September 10, 2002 ruling, the essence of the complaint is that SCE’s Rule 1, as adopted, implemented, and applied by the Commission in D.97-09-056, is in conflict with § 331(h). The complainants also allege that SCE’s Rule 1 or § 331(h) are in conflict with other Commission decisions, that SCE violated the other decisions, and that SCE fraudulently misrepresented SCE’s Rule 1 to the Commission.

At the prehearing conference, the ALJ stated that the initial hurdle that would have to be overcome was the legal issue about the finality of the decisions which led to the 10% rate reduction. The ALJ stated that if the Commission decides that these decisions are final, that would end this complaint proceeding. If, however, the Commission were to decide that the decisions, or the way in which the tariffs or the Code sections were applied should be reexamined, then that could open the door for possible evidentiary hearings.

The first issue that the Commission needs to address is whether the complainants' allegations regarding the conflict between § 331(h) and the Commission decisions and the tariffs implementing the 10% rate reduction were timely or not. The complainants did not file any application for rehearing of the decisions at issue. This first issue must be addressed by the Commission before any other issues raised by the complainants are examined.

The second issue is even if the Commission decisions are final, are there compelling reasons why the Commission should reexamine these decisions. One possible reason why the Commission might want to reexamine the decisions is because of the complainants' allegations that SCE fraudulently misrepresented SCE's Rule 1 to the Commission.

If the Commission decides to reexamine the Commission decisions regarding eligibility for the 10% rate reduction, the third issue is whether the complainants are considered small commercial customers, whether SCE failed to provide them with the rate reduction, whether the complainants are entitled to a refund, and whether the complainants are obligated to pay for the rate reduction bonds.

A fourth issue that the Commission may address is whether or not SCE violated any law. The complainants contend that the Commission should

address this issue, even if the complainants' did not timely file for rehearing of the decisions, because of the unfair competition cause of action that is pending in the Superior Court.

As noted in the September 10, 2002 ruling and the ALJ's statement at the prehearing conference, no evidentiary hearings are required on the first issue because it is a legal issue that was addressed by the parties in opening and reply briefs. If the Commission decides to address the remaining issues, then evidentiary hearings may be needed. However, a final determination as to whether hearings are needed for the remaining issues will not be decided until the Commission decides the first issue.

As indicated in the September 10, 2002 ruling and at the prehearing conference, the Commission should first address the issue about the finality of the decisions which the complainants contend are in conflict with § 331(h) and SCE's Rule 1. The complainants' allegations regarding D.97-09-056, D.96-12-077, and D.97-08-056 were not raised until March 2002, when this complaint proceeding was instituted. Both the Public Utilities Code and the Commission's Rules of Practice and Procedure specify the time in which a Commission decision can be challenged on legal grounds. In addition, § 1709 provides that "In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." Thus, the processing of this proceeding shall proceed with the issuance of a Commission decision regarding whether the three decisions are final, or if compelling reasons exist for the Commission to reexamine these prior decisions.

If the Commission determines that all three decisions are final decisions, that could end this proceeding. If the Commission decides in this upcoming

decision that it should reexamine the three decisions, then the Commission may schedule hearings into the remaining issues.

This complaint proceeding was categorized as adjudicatory in the instructions to answer that was issued on April 23, 2002. No one filed a timely appeal to the categorization. As an adjudicatory proceeding, the ex parte rules contained in Rule 7(b) of the Commission's Rules of Practice and Procedure apply to this proceeding.⁴

The presiding officer for this proceeding shall be ALJ Wong.

Schedule

This proceeding should be processed in accordance with the following schedule:

Draft decision issued.	June 10, 2003
Comments and reply comments on draft decision.	In accordance with Rule 77.7.
Decision adopted by the Commission.	July 10, 2003

If the Commission decides in the upcoming decision that the prior decisions should be reexamined, a schedule for the further processing of this proceeding will be issued.

⁴ Although the complaint involves allegations regarding SCE's violation of the Public Utilities Code and various Commission decisions, this proceeding also involves the ratesetting issue of whether the complainants should have been provided with the 10% rate reduction. However, pursuant to Rule 6(b) and Rule 6.1(b), this proceeding shall be categorized as adjudicatory.

Motion to File Under Seal

On December 20, 2002, SCE filed a motion for leave to file confidential materials under seal. These materials, which SCE seeks to file under seal, were contained in Appendix A of SCE's reply brief that was filed on November 19, 2002. According to SCE, the Appendix A materials contain specific usage information for Anchor Lighting. No one filed a response to SCE's motion.

Due to the specific usage information contained in Appendix A of SCE's reply brief, SCE's motion to file the Appendix A materials under seal is granted.

IT IS RULED that:

1. Administrative Law Judge John S. Wong is designated the presiding officer for this proceeding.
2. The issues to be determined in this proceeding are as listed in the body of this scoping memo and ruling.
3. The schedule for this proceeding is as listed in the body of this ruling.
4. The December 20, 2002 "Motion of Southern California Edison Company (U-338-E) for Leave to File Confidential Materials Under Seal..." is granted.
 - a. The Commission's Docket Office is directed to file the materials attached to the motion under seal.

Dated May 8, 2003, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated May 8, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

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